



[Billing Code 7709-02]

## **PENSION BENEFIT GUARANTY CORPORATION**

### **Approval of Special Withdrawal Liability Rules: Alaska Electrical Pension Plan of the Alaska Electrical Pension Fund**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) received a request from the Alaska Electrical Pension Plan of the Alaska Electrical Pension Fund for approval of a plan amendment providing for special withdrawal liability rules. PBGC published a Notice of Pendency of the Request for Approval of the amendment. PBGC is now advising the public that the agency has approved the requested amendment.

**FOR FURTHER INFORMATION CONTACT:** Jon Chatalian, ext. 6757, Acting Assistant General Counsel (*Chatalian.Jon@PBGC.gov*), 202-326-4020, ext. 6757, Office of the General Counsel, Suite 340, 1200 K Street N.W., Washington, DC 20005-4026; (TTY users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020.)

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (ERISA), provides that a complete withdrawal from a multiemployer plan generally occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205 of ERISA, a partial withdrawal generally occurs when an employer: (1) Reduces its contribution base units by seventy percent in each of three consecutive

years; or (2) permanently ceases to have an obligation under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer; or (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased.

Although the general rules on complete and partial withdrawal identify events that normally result in a diminution of the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement, or resumes such work within 5 years without renewing the obligation to contribute at the time of resumption. In the case of a plan terminated by mass withdrawal (within the meaning of section 4041(A)(2) of ERISA), section 4203(b)(3) provides that the 5-year restriction on an employer's resuming covered work is reduced to 3 years. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general

definition of complete withdrawal in section 4203(a) of ERISA includes the permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under section 4208(d)(1) of ERISA, “[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.” Under section 4208(d)(2) of ERISA, “[a]n employer to whom section 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.”

Section 4203(f)(1) of ERISA provides that PBGC may prescribe regulations under which plans in other industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203(b) and (c) of ERISA. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that the use of such rules will not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which plans may be amended to adopt special partial withdrawal liability rules upon a finding by PBGC that the adoption of such rules is consistent with the purposes of Title IV of ERISA.

PBGC’s regulations on Extension of Special Withdrawal Liability Rules (29 CFR part 4203) prescribe procedures for a multiemployer plan to ask PBGC to approve a plan amendment

that establishes special complete or partial withdrawal liability rules. Section 4203.5(b) of the regulation requires PBGC to publish a notice of the pendency of a request for approval of special withdrawal liability rules in the *Federal Register*, and to provide interested parties with an opportunity to comment on the request.

### **The Request**

PBGC received a request from the Alaska Electrical Pension Plan of the Alaska Electrical Pension Fund (the “Plan”), for approval of a plan amendment providing for special withdrawal liability rules. The Plan subsequently provided supplemental information in response to a request from PBGC. PBGC published a Notice of Pendency of the Request for Approval of the amendment on June 5, 2018. PBGC’s summary of the actuarial reports provided by the Plan may be accessed on PBGC’s Web site (<https://www.pbgc.gov/prac/pg/other/guidance/multiemployer-notices.html>). PBGC did not receive any comments from interested parties.

In summary, the Plan is a multiemployer pension plan maintained pursuant to a collective bargaining agreement between the Alaska Chapter National Electrical Contractors and the I.B.E.W. 1547 (“Union”), collective bargaining agreements between individual employers and the Union, and “special agreements” between various employers and the Board to provide for participation by certain non-bargained employees. The Plan covers unionized employees who predominantly work in the electrical industry in Alaska. Approximately one-third of the participants are employed in the building and construction industry and the remaining two-thirds are employed in the utilities and telecommunications industry.

The Plan’s proposed amendment would be effective for withdrawals occurring on or after January 1, 2017, and would create special withdrawal liability rules for employers contributing

to the Plan whose employees work under a contract or subcontract with federal government agencies governed by the Service Contract Act (“SCA”), 41 U.S.C. 351 *et seq.*; provided that substantially all of the employees for whom the employer is required to make a contribution work under a service contract (“SCA Employers”). The Plan’s submission represents that the industry for which the rule is requested has characteristics similar to those of the construction industry. According to the Plan, the principal similarity is that when a contributing SCA Employer loses a contract, the applicable federal government agency typically contracts with a new SCA Employer to contribute at the same or substantially the same rate, because the SCA provides that employees must not be paid less than the minimum monetary wages and fringe benefits found prevailing in a particular locality in accordance with the applicable collective bargaining agreement.

Under the following circumstances relating to SCA Employers, the Plan’s proposed amendment defines a complete withdrawal as follows:

(1) If an SCA Employer ceases to have an obligation to contribute to the Plan because it loses all its Service Contracts and the successor SCA Employer has an obligation to contribute to the Plan for work performed under the Service Contract at the same or a higher contribution rate and for at least 85% as many contribution base units as such SCA Employer had during the plan year ending before such SCA Employer lost the contract, a complete withdrawal occurs only if the SCA Employer:

(A) Continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required; or

(B) Within 5 years after the date on which the SCA Employer loses the Service Contract(s),

(i) Such SCA Employer resumes such work and does not renew the obligation at the time of resumption; or

(ii) The federal government decides to close the facility, have the work performed by government employees, or transfer the work covered by the Service Contract to another location that is not covered by a collective bargaining unit; or

(iii) The successor SCA Employer ceases contributions to the Plan for work performed pursuant to the Service Contract.

Under the following circumstances relating to SCA Employers, the Plan's proposed amendment defines a partial withdrawal as follows:

(1) If an SCA Employer loses a contract to a successor SCA Employer, and if the successor has an obligation to contribute to the Plan for work performed under the Service Contract at the same or a higher contribution rate and for at least 85% as many contribution base units as such SCA Employer had during the plan year ending before such SCA Employer lost the contract, a partial withdrawal occurs only if the SCA Employer has an obligation to contribute for no more than an insubstantial portion of its work in the jurisdiction of a collective bargaining agreement for which contributions are or were required to the Plan, and either,

(A) The SCA Employer continues to perform work in the jurisdiction of a collective bargaining agreement of the type for which contributions were previously required; or

(B) Within 5 years after the date on which the SCA Employer loses the Service Contract,

(i) The federal government decides to close the facility, have the work performed by government employees, or transfer the work covered by the service contract to another location that is not covered by a collective bargaining unit; or

(ii) The successor SCA Employer ceases contributions to the Plan for work performed under the Service Contract.

In the case of termination by mass withdrawal (within the meaning of section 4041A(a)(2) of ERISA), the proposed amendment provides that section 4203(b)(3) of ERISA, the provision that allows a construction employer to resume covered work after 3 years of withdrawal, rather than the standard 5-year restriction, is not applicable. Therefore, in the event of a mass withdrawal, there is still a 5-year restriction on resuming covered work in the jurisdiction of the Plan. The Plan's request includes the actuarial data on which the Plan relies to support its contention that the amendment will not pose a significant risk to the insurance system under Title IV of ERISA.

### **Decision on the Proposed Amendment**

The statute and the implementing regulation state that PBGC must make two factual determinations before it approves a request for an amendment that adopts a special withdrawal liability rule. ERISA section 4203(f); 29 CFR 4203.5(a). First, based on a showing by the plan, PBGC must determine that the amendment will apply to an industry that has characteristics that would make use of the special rules appropriate. Second, PBGC must determine that the plan amendment will not pose a significant risk to the insurance system. PBGC's discussion on each of those issues follows. After review of the record submitted by the Plan, and having received no public comments, PBGC has made the following determinations.

#### *1. What is the Nature of the Industry?*

In determining whether an industry has the characteristics that would make an amendment to special rules appropriate, an important inquiry is the extent to which the Plan's contribution base resembles that found in the construction industry. This threshold question

requires consideration of the effect of SCA Employer withdrawals on the Plan's contribution base. Similar to construction industry employers, when an SCA Employer loses its contract, the applicable federal government agency contracts with a new SCA Employer to contribute at the same or substantially the same rate. This is because the SCA provides that employees must not be paid less than the wages and fringe benefits set by the collective bargaining agreement. The Plan presented historical data that demonstrates over the past 15 years, cessation of contributions by any individual SCA employer has not had an adverse impact on the Plan's contribution base. Most SCA employers that have ceased to contribute have been replaced by another employer who begins contributing for the same work. Therefore, PBGC has concluded that the amendment will apply to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate.

## *2. What is the Exposure and Risk of Loss to PBGC?*

*Exposure.* The Plan is in a strong funded position. For each Plan year since the adoption of PPA, the Plan's actuary certified that it was not endangered, critical, or critical and declining status, and as of January 1, 2017, the Plan's funded percentage was 94.4%. The Plan is a Green zone plan with steady contributions and a solid base of active participants.

*Risk of loss.* The record shows that the proposed amendment presents a low risk of loss to PBGC's multiemployer insurance program. SCA employers constitute a small part of the total number of employers obligated to contribute to the Plan. Eight of the Plan's approximately 130 contributing employers are SCA employers and 3% of the Plan's active participants are employed by SCA Employers. In addition, the industry covered by the amendment has unique characteristics that suggest the SCA Employers' contribution base is likely to remain stable, and the historical data provided by the Plan demonstrates that if the proposed amendment had always



been in effect, the Plan's withdrawal liability payments would have been reduced by only .03% of the Plan's \$1.8 billion assets. Accordingly, the data substantiates the Plan's assertions that the SCA Employer contribution base is secure and the amendment will not pose a significant risk to the insurance system.

## **Conclusion**

Based on the Plan's submissions and the representations and statements made in connection with the request for approval, PBGC has determined that the plan amendment adopting the special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the Plan's request for approval of a plan amendment providing special withdrawal liability rules, as set forth herein. Should the Plan wish to amend these rules at any time, PBGC approval of the amendment will be required.

Issued in Washington DC by

**William Reeder,**

*Director*

*Pension Benefit Guaranty Corporation.*

[FR Doc. 2018-21040 Filed: 9/26/2018 8:45 am; Publication Date: 9/27/2018]